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EDITORIAL COMMENTS

The Ioannina Compromise – Towards a wider and a weaker European Union?

By the end of March 1994, negotiations for accession to the European Union of Austria, Finland, Norway and Sweden were brought to a successful conclusion. By and large, satisfactory transitional arrangements had been devised which will allow the applicant countries to make an orderly changeover from EEA-membership to full membership of the European Union. If all goes well, the Accession Treaties and the amendments to the Treaty on European Union and to the Community treaties will come into effect on January 1, 1995.

Naturally, all may not go well. The membership issue will be the subject of a referendum in each of the applicant States and the outcome appears in no way to be a foregone conclusion. Neither is it certain that no national Parliament will see fit to block ratification. Moreover, the European Parliament nowadays is also a force to be reckoned with. It is required to give its assent to the proposed enlargement, and it has shown itself extremely concerned, not to say alarmed, over the way in which the Twelve have found a way out of the institutional wrangle which pitted two Member States against the other ten with regard to the issue of majority voting in the Council after enlargement. However, it is unlikely, though not entirely inconceivable, that the Parliament is ready to trigger a major crisis by taking the momentous political step of withholding its assent to the proposed enlargement.

It may be recalled that the European Council decided in Lisbon in 1992 that the Community could be joined by new members after the

coming into force of the Treaty of Maastricht. The Heads of State and of Government stated that there was no need to postpone enlargement until there had been a substantial "deepening" of integration among the Twelve on the basis of the Treaty on European Union. Though widening was not conditional upon prior deepening and on progress towards economic and monetary union, the European Council cautioned at that time that the anticipated enlargement should neither create institutional difficulties nor impair otherwise the Community's capacity for action.

The four applicant countries' actions have been fully consonant with these principles. They have fully accepted the Treaties' political and institutional implications. They have also embraced the "acquis Communautaire" in the economic, monetary and social fields. There have been no claims for any permanent derogations, exemptions or opt-outs which could lead to a further fragmentation of the Union ("L'Europe à la carte") and to further attacks on the effectiveness of decision making by the Union's institutions.

However, the waters were profoundly muddied by the refusal of Spain and the United Kingdom to honour the *unanimous* decision of the European Council adopted at its Lisbon meeting in 1992 and confirmed at Copenhagen in 1993, according to which negotiations for enlargement could not form the occasion for changing the Treaty rules on qualified majority voting in the Council, with the exception of the arithmetical adjustment of the votes required to adopt a decision for which a qualified majority vote is necessary. At present, in cases where the Council may adopt an act by a qualified majority, such an act requires 54 votes out of a total of 76 (weighted) votes. This means that 23 votes are needed to form a "blocking minority." Such a minority can be made up of two of the larger member countries (which command 10 votes, or 8 votes in the case of Spain) and one smaller Member State which has a sufficient number of votes (3 or 5) to complete the addition. After enlargement, the 14 votes allocated to the new members (4 for Austria and for Sweden, 3 for Finland and for Norway) will bring the total up to 90. By arithmetical extrapolation, the qualified majority will go up to 64 and the blocking minority to 27. This means that a large country such as the UK can only block a decision if it enlists the support of at least one other large Member State commanding 10 votes and two smaller countries

bringing in at least another 7 votes. The result is that it will become slightly more difficult than it is today for the large Member States to form alliances that are powerful enough to prevent the adoption of unwelcome Community decisions. This is what the UK and Spain regarded as unacceptable. They claimed that the blocking threshold should remain fixed at the level of 23 votes and that the influex of a number of small countries should not lead to a weakening of the large countries' blocking power.

The Twelve have sought to break the deadlock by discussing various compromise formulas. For the time being, a crisis has been averted. However, the final compromise presented by the Greek Residency, which was approved by the delegations of the Member States on March 30, 1994, barely papers over the cracks. The text of this compromise, which was also accepted by the four applicant countries, is as follows:

> "a) The twelve present-day Member States of the European Union agreed that, in the event four new Member States join the Union, the threshold for qualified majority required by the Treaties will be set at 64 votes. They also agreed that the question of the reform of the institutions, including the weighing of votes and the qualified majority threshold in the Council, will be addressed at the Conference of Representatives of the Governments of the Member States to be convened in 1996, in accordance with Article N, paragraph 2 of the Treaty on European Union.
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> b) The Twelve also agreed to invite the European Parliament, the Council and the Commission to draw up a report on the functioning of the Treaty on European Union. Its report will fuel the work of a study group of Representatives of the Foreign Ministers which is expected to be created by the European Council in Corfu, and to begin its work in 1995. This group will work in association with the European Parliament. It will prepare, inter alia, options based on the Member States' positions and arguments on the weighing of votes and the qualified majority threshold, taking account of a future enlargement.
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> c) The Twelve took note of the Council's decision that, if Members of the Council representing a total of 23 to 26 votes indicate their intention to oppose the taking of a Council decision by qualified majority, the Council will make every effort to find a satisfactory solution that can be adopted by at least 68 votes, within a reasonable period and without prejudicing the compulsory limits

> fixed by the treaties and secondary law, for example, in Articles 189B and 189C of the Treaty establishing the European Community. During this period, and also in compliance with the Council's Rules of Procedure, the President shall take every initiative, with assistance from the Commission, to try to build a wider basis of agreement within the Council. The Council Members shall assist him in this effort.
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> d) The Twelve also agreed that the different elements of this Declaration shall remain applicable until the entry into force of an amendment to the treaties, following the 1996 conference."[1]

How is this compromise to be appraised?

The Commission, as could be expected, has made an immediate attempt to limit the damage by pointing to the political nature of the Conference declaration and to the fact that the agreement constitutes a transitional arrangement which can in no way be considered a precedent weighing on the deliberations of the Intergovernmental Conference of 1996. It further noted that nothing in the declaration could prevent the Commission or any Member State at any moment from calling for a vote in the Council as soon as the delay considered reasonable could be deemed to have expired.

The UK Government has qualified the Ioannina text as a legal document. Though this claim is probably erroneous, there is no reason to regard a political statement which commits the 16 Member States to a great deal of circumspection in the decision-making process and which may cause considerable delays in the process of adoption of Union legislation as any less damaging to European integration than a legal clause written into the Treaties. Political decisions between politicians do not necessarily have a lesser impact than decisions with a legal character.

It is not difficult to note the similarity between the so-called Luxembourg Compromise of 1966 and the Ioannina Compromise. Both documents are concerned with the issue of majority voting and in both cases the members of the Council agree to make an endeavour, during a reasonable period, to build a wide(r) agreement within the Council. However, the Luxembourg compromise was not a real compromise, but

1. Agence Europe, 30 March 1994, No. 6201, p. 4 (unofficial translation).

rather an "agreement to disagree". At the time, the French delegation considered that where very important interests are at stake discussions in the Council must continue until unanimous agreement could be reached. This view was not shared by the other delegations. Nevertheless, it is common knowledge that the Luxembourg Accord had a profoundly negative impact on legislative activity of the Community and that it clipped the Commission's wings.

The Ioannina text can be contrasted with the Luxembourg Accord. It is a genuine compromise in the sense that it expresses agreement between the Member States to the effect that an act contemplated by the Council will in certain situations have to remain in a state of suspended animation during a "reasonable" period of reflection. No one knows how long that period will be. By virtue of Article 7 of the Council's Rules of Procedure,[2] the Commission and all Member States have the right to ask the Council's President to proceed to the taking of a vote. Such a request must be complied with if it obtains the support of the majority of the members of the Council. This possibility exists since the coming into force of the Single European Act (July 1, 1987) but it has never been used. One wonders whether the Member States will be prepared to make use of Article 7 of the Rules of Procedure in order to cut short the period of reflection introduced by the Ioannina compromise. Or should one surmise that Member States will refrain from "rocking the boat", out of fear that they themselves one day could be placed in a minority position so that it would be wise not to insist on a very narrow interpretation of the concept of "reasonable" period?

One thing is certain. The European Union is in need of more effective decision-making. The present compromise, even if it will not undermine the supranational character of the decision-making process to the same extent as the Luxembourg Accord, is a dangerous step backwards. The fact that this agreement is only valid until it is replaced by new arrangements to be agreed at the Review Conference in 1996 should not be used as an alibi to do nothing about it. Its effects and scope are to be circumscribed and limited as much as possible. *Rien ne dure plus longtemps que le provisoire!*

2. Council Decision 93/662/EC of 6 Dec., 1993, O.J. 1993, no. L 304/1.